

**OPINION
53-109**

August 5, 1953 (OPINION)

TAXATION

RE: County Road Fund

This office is in receipt of your request of July 29, 1953, asking for an opinion dealing with the following problems which you state as follows:

"In the past, Morton County has levied a tax pursuant to section 24-0501 of the N.D.R.C. of 1943. The proceeds of that levy have been held in the County Road Fund. In addition, they have levied a tax for building bridges. The proceeds of that levy have been held in the bridge fund. Their questions are as follows:

1. Can they make a new levy of one-fourth mill under chapter 179 and distribute that in accordance with said chapter.
2. If they do that, can they continue the levy mentioned above for the road fund without making distribution to the municipalities?
3. Is the bridge tax, which is a separate levy and is expended only for bridge purposes, subject to distribution to the municipalities under chapter 179?"

The answer to your first question is "yes". In connection with this, may we direct your attention to the fact that chapter 179 of the 1953 Session Laws amends section 24-0501 of the North Dakota Revised Code of 1943 which provides for the establishment of a county road fund. The taxes so levied shall be in addition to any other tax for highway purposes otherwise provided by law. Chapter 179 should also be noted repeals section 24-0618 of the North Dakota Revised Code of 1943. Note also should be had of the fact that the distribution has been changed to the extent that under section 24-0618 all county road taxes collected from residents of any city, village, or township should be distributed back to the various municipalities, while under chapter 179, townships have been omitted and the cities and villages are entitled to only twenty percent of the tax collected within such city or village.

Answering question two, it is our opinion that chapter 179 of the 1953 Session Laws replaces the levy theretofore provided for by section 24-0501. It will be noted, however, that in chapter 179, the taxes there levied for county road purposes are in addition to any and all other taxes levied by the county for highway purposes. Therefore, if the county has or intends to levy other taxes provided for by law for highway purposes, they do not need to make distribution thereof as provided for in chapter 179.

Answering your question three, it is our opinion that any tax levied

for bridge purposes by the county is not included within the provisions for distribution contained in chapter 179 mentioned above. However, chapter 179 provides that if taxes had been levied and collected for other purposes in the county and are later transferred into the county road fund, that then the same proportion thereof must be allocated to the cities and villages as is provided for in chapter 179.

ELMO T. CHRISTIANSON

Attorney General